Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

STEPHEN RUPPENTHAL,

Petitioner,

v.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition For Writ Of Certiorari
To The Appellate Court Of Illinois
First District

PETITION FOR WRIT OF CERTIORARI

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24 pp

QUESTION PRESENTED

Whether Petitioner's First Amendment right of freedom of thought was violated where his legal act of soliciting an adult to commit a sex act was transformed into a crime, upon proof that the Petitioner believed that the adult to whom he was speaking was a child.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Stephen Ruppenthal, prays that a writ of certiorari issue to review the judgment of the Illinois Appellate Court, First District, affirming this conviction and sentence for indecent solicitation of a child.

OPINIONS BELOW

The opinion of the Illinois Appellate Court, First District, affirming Petitioner's conviction is reported at 331 Ill.App.3d 916, 771 N.E.2d 1002, and attached hereto in Appendix A. The Illinois Appellate Court's unpublished Order on July 2, 2002 denying rehearing is attached hereto in Appendix B. The Illinois Supreme Court's unpublished order on October 2, 2002 denying leave to appeal is attached hereto in Appendix C.

JURISDICTION

The Illinois Appellate Court, First District, affirmed Petitioner's conviction and sentence on May 24, 2002, and denied a timely filed Petition for Rehearing on July 2, 2002. Petitioner filed

a timely Petition for Leave to Appeal to the Illinois Supreme Court which was denied on October 2, 2002. Jurisdiction is conferred by 28 U.S.C. Sec.1257(a) and United States Supreme Court Rule 13.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the free speech provision of the First Amendment to the United States Constitution and the Due Process clause of the Fourteenth Amendment. In pertinent part, the First Amendment reads as follows:

> Congress shall make no law…abridging the freedom of speech…

The Fourteenth Amendment reads in relevant part:

> [Nor] shall any state deprive any person of life, liberty, or property without due process of law.

STATEMENT

The Petitioner, an adult male, entered an Internet chat room and solicited a police officer, an adult male, to commit a sex act. The officer told the Petitioner that he was a fourteen year old girl named Stacy. When he was arrested, the petitioner told the police that he "thought Stacy was about 15."

The Petitioner was convicted of violating Illinois' indecent solicitation of a child statute that provides in relevant part:

> A person…commits the offense of indecent solicitation of a child if the person, with the intent that [a sexual offense against a child] be committed, knowingly solicits…one whom he or she believes to be a child to perform a [sex act].
> 720 ILCS 5/11-6

REASONS FOR GRANTING THE WRIT

> THE ILLINOIS STATUTE THAT TRANSFORMEDTHE PETITIONER'S LEGAL SOLICITATION OF AN ADULT TO PERFORM A SEX ACT INTO A CRIME, UPON PROOF THAT THE PETITIONER BELIEVED THE ADULT TO WHOM HE WAS SPEAKING WAS A CHILD, VIOLATED PETITIONER'S FIRST AMENDMENT CONSTITUTIONAL GUARANTEE OF FREEDOM OF THOUGHT AND HIS FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS OF LAW.

The Petitioner's solicitation of another adult to perform a sex act did not, by itself, violate Illinois' indecent solicitation of a child statute. Under the statute, the words he spoke, his speech, became illegal only because of his belief that he was speaking to a child.

This Court has held that the First Amendment guarantee of freedom of speech is applicable to the several states through the Due Process Clause of the Fourteenth Amendment. *Gitlow v. New York*,

268 U.S.652,666, 45 S.Ct. 625, 630 (1925). This Court has further held that freedom of speech includes the right of freedom of thought. *Ashcroft v. The Free Speech Coalition*, 535 U.S. 234, 122 S.Ct. 1389, 1403 (2002).

The Petitioner's solicitation of an adult to perform a sex act, not made illegal by the Illinois legislature, was protected speech, as it was not "directed to inciting or producing imminent lawless action..." *Ashcroft*, 122 S.Ct at 1403. Government "may enforce criminal penalties for unlawful solicitation. The precedents establish, however, that speech within the rights of adults to hear may not be silenced completely in an attempt to shield children from it." *Ashcroft*, 122 S.Ct. at 1402.

Petitioner's protected speech was transformed into a crime, upon proof of his private thought that he was speaking to a child. This Court has held that "government cannot constitutionally premise legislation on the desirability of controlling a person's private thoughts." *Ashcroft*, 122 S.Ct. at 1403.

The Petitioner's belief that he was speaking to a child was unaccompanied by an illegal act, and cannot therefore, as this Court

has held, be made the subject of punishment. *Wisconsin v. Mitchell,* 508 U.S. 476, 485-87, 113 S.Ct. 2194, 2200-01 (1992); *c.f. Reynolds v. United States*, 98 U.S. 145, 164 (1878) ("Congress was deprived of all legislative power over mere opinion, but was left free to reach *actions* which were in violation of social duties or subversive of good order) (emphasis added); and *R.A.V. v. City of St. Paul*, 505 U.S. 377, 381, 112 S.Ct. 2538, 2542 (1992) (City's Ordinance was facially unconstitutional because "it prohibits otherwise permitted speech solely on the basis of the subjects the speech addresses.")

CONCLUSION

For the foregoing reasons, Petitioner respectfully prays that a writ of certiorari issue.

Respectfully submitted,

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